

The Association of Golf Course Owners – Abbotsley Golf Club – St. Neots PE19 6XN

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Fighting for fair VAT and tax in golf for 20 years

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Gentlemen,

Bridport and West Dorset ECJ Case C-495/12 – unjust enrichment

The judgment has now reinforced the fact that green fees at member-owned golf clubs should have been VAT exempt from 1st January 1990. That being the case, the 457 clubs standing behind Bridport are making a VAT refund claim of over £115 million. That figure has been disclosed to us under a Freedom of Information Act enquiry. HMRC has also disclosed that the number of claims is in excess of 1000. The rule of thumb given on the size of a claim is that most clubs can expect a refund equating to roughly twice their current green fee income. That will mean that many large clubs will have claims in excess of £2 million.

Bridport is unique in that they actually paid corporation tax on the green fees, having reached an agreement with the Revenue in 1992. Their accounts show that for year ended 2011 Bridport paid £5,202 in corporation tax. That very simply is why KPMG used them to front the case. They couldn't find any other club paying corporation tax. If KPMG had used its own client, Clitheroe Golf Club, Judge Colin Bishopp would doubtless have realised the tax evasion taking place.

You are now faced with a massive refund of VAT. With interest it could presumably be £500 million. At the same time it is clear that all the clubs have evaded tax or the Inland Revenue has down disgraceful deals. We have reported the deal between Formby Golf Club Ltd (No 461249) disclosed in their 2000 accounts, page 2, on which they refer to proposals being made by accountants which were accepted. Members' clubs know they have been acting dishonestly.

Our view at AGCO is that HMRC has no option but to fight the refunds of VAT on the basis of unjust enrichment. It would be wrong simply to tackle Bridport. They are a minnow compared with the sharks trailing in their wake. The overall tax evasion needs to be exposed when claims are made.

There are obviously clear guidelines on unjust enrichment. These are our points:

- Apart from Bridport all other clubs making the claims for refunds of VAT have evaded corporation tax on the green fees on which they are reclaiming VAT. Thus they cannot go to the Courts with clean hands and any applications for refunds should be refused.
- We have pointed HMRC to the fact that the claimed refunds of VAT are probably on some £3 billion of visitors' green fees on which there has been systematic evasion of corporation tax.
- Many of the green fees on which these clubs are asking for VAT refunds have been made through agents and fall foul of paragraph 3.4.1. The clubs will doubtless have failed to distinguish between green fees taken directly and those sold through booking agents.
- With a members' club, which is unincorporated, the members who would benefit now from the refund were not the members in 1990 onwards.
- The VAT element was clearly passed on to the consumer. Many charges were high. A green fee at some elite clubs was as high as £100 in 1990 and individual green fees in 2013 were as high as £300 per head at the same clubs.
- Over the years the average green fee might have been perhaps £40 at a more modest club. There was still a substantial VAT element passed on to the individual customer.
- The vast majority of green fees are from visitors. They were not for guests of members paying for their guests. This is not a question of members having put more money into their own kitty. The records kept by members' clubs are woefully inaccurate and they will doubtless be unable to clarify the green fees paid by members for their guests and the green fees paid by 'strangers'.
- The term 'temporary member' does not imply that the green fee was for a guest of a member. This has been a term used to hide taxable green fee income and evade tax.
- The clubs, in taking those green fees, simply absorbed the funds into their club. They benefitted from the fees. To give them a refund would simply enable the clubs to benefit again and they will have no intention or ability of repaying the VAT to customers.
- To make these refunds of VAT going back 23 years would simply add to an already heavily distorted golf industry. Most small proprietary golf clubs have been virtually bankrupted by the distortion caused by the VAT differential on membership fees. To allow these refunds would devastate the market completely.

May we urge you to defend all applications for refunds of VAT and ensure that Bridport alone is not allowed to front any case on unjust enrichment? It is a wolf in sheep's clothing and completely unrepresentative of the clubs latching on to its claim.

We are asking golf club owners to refer this issue to their MPs and specifically asking that they pass this on to the Chancellor of Exchequer and Treasury Secretary so that they can see the potential misuse of £500 million of public funds.

Yours sincerely,

Vivien Saunders - *Andrew Sutcliffe* - *Ross Noades*

Vivien Saunders (Chairman) – Andrew Sutcliffe (Deputy Chairman) – Ross Noades (Director)
For and on behalf of the Association of Golf Course Owners(1993)